IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5208 OF 2007

Mehta Hardware Stores ....Petitioner
V/s
Hasmukhrai Dhirajlal Mehta ....Respondent.

Mr.Amit Borkar, Adv. For the petitioner.

CORAM: A.P.DESHPANDE, J.
6/9/07

PC:

An application moved by the original defendant for framing of additional issue has been rejected by the trial Court giving rise to a cause for filing of the present writ petition. The plaintiff has filed a suit against the defendant-firm for rendition of accounts and for direction for payment of the amount receivable by the petitioner from the defendant with interest. The claim made in the plaint has been denied by the defendant by pleading a specific case that under the family settlement dated 13.3.92 it was agreed that the plaintiff shall receive from the defendant towards full and final settlement of his claim a sum of Rs.2 lacs and as per the said agreement the defendant has paid Rs.l lac on 8.4.92and the balance amount of Rs.1 lac by cheque drawn on United Bank of India bearing No.51227. The defendant has categorically pleaded that the family settlement dated 13.3.92 disentitles the plaintiff from claiming accounts and/or share in the profit of the defendant-firm.

2. The trial Court has framed issues and issue No.5 deals with entitlement of the plaintiff to claim accounts from the defendant-firm. As the trial Court was of the view that the issues proposed by the defendant for being framed as additional issues are already included in issue Nos.5 and 6 it has proceeded to reject the application moved by the petitioner fro framing additional issues. The proposed additional issues specifically relate to family settlement dated 13.3.92 and its effect on the suit claim. As the trial Court is conscious of the specific plea raised by the defendant-petitioner and as the trial Court is of the opinion that the said plea is covered by issue No.5 no interference with the impugned order is called for. Writ petition is thus summarily dismissed.

6.9.07